IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

CHRISTIAN GARCIA,	/	
	/	
Plaintiff,	/	
	/	
v.	/	Case No: 1:15-CV-1324
	/	
GREGORY HOLDEN and DOUGLAS SERVEN, Police Officers with the Alexandria Police Department, sued in their individual capacity,	/	
	/	
Defendants.	/	

DEFENSES AND ANSWER OF DEFENDANT SERVEN TO FIRST AMENDED COMPLAINT

COMES NOW Defendant Douglas Serven, by counsel, and for his Defenses and Answer to the First Amended Complaint filed against him herein, states as follows:

FIRST DEFENSE

The First Amended Complaint fails to state a claim for which relief may be granted as to this Defendant for any alleged violation of the Plaintiff's rights under the Fourth, Eighth, or Fourteenth Amendments to the Constitution.

SECOND DEFENSE

The First Amended Complaint fails to state a cause of action as to this Defendant for any violation of civil rights.

THIRD DEFENSE

The First Amended Complaint fails to state a cause of action against this Defendant for gross negligence.

FOURTH DEFENSE

In responding to the individually numbered paragraphs of the First Amended Complaint, Defendant Serven states as follows:

1. He denies the allegations contained in paragraphs one and two of the First Amended Complaint.

2. In responding to paragraph three of the First Amended Complaint, he denies the first sentence of that paragraph and he is unadvised as to the truth or falsity of why this lawsuit was filed so those allegations should be taken as denied where material. In further response to paragraph three of the First Amended Complaint, he admits that this court has jurisdiction.

3. He is unadvised as to the truth or falsity of the allegations contained in paragraph four of the First Amended Complaint so those allegations should be taken as denied where material.

4. He admits the allegations contained in paragraphs five and six of the First Amended Complaint.

5. He is unadvised as to the truth or falsity of the allegations contained in paragraph seven of the First Amended Complaint so those allegations should be taken as denied where material.

6. Upon information and belief, he admits the allegations contained in paragraph eight of the First Amended Complaint.

7. In responding to paragraph nine of the First Amended Complaint, upon information and belief, he admits that Officers Holden and Moore made contact with Plaintiff outside a parked car with the smell of marijuana and that Officer Holden communicated to Officer Moore to detain the Plaintiff as he could smell marijuana. Also upon information and

belief, he denies any further allegations contained in paragraph nine of the First Amended Complaint.

8. Upon information and belief, he denies the allegations contained in paragraphs ten, eleven, twelve, thirteen, fourteen and fifteen of the First Amended Complaint.

9. He denies the allegations contained in paragraphs sixteen and seventeen of the First Amended Complaint.

10. He denies as stated the allegations contained in the first paragraph numbered eighteen of the First Amended Complaint.

11. He denies the allegations contained in the first paragraph numbered nineteen of the First Amended Complaint.

12. In responding to the second paragraph numbered eighteen of the First Amended Complaint, he repleads and incorporates paragraphs one through eleven of this Answer as though fully set forth herein.

13. He denies the allegations contained in the second paragraph numbered nineteen of the First Amended Complaint.

14. He denies the allegations contained in paragraph twenty of the First Amended Complaint.

15. In responding to paragraph twenty-one of the First Amended Complaint, he repleads and incorporates paragraphs one through fourteen of this Answer as though fully set forth herein.

16. He denies the allegations contained in paragraphs twenty-two and twenty-three of the First Amended Complaint.

17. In responding to paragraph twenty-four of the First Amended Complaint, he repleads and incorporates paragraphs one through sixteen of this Answer as though fully set forth herein.

18. He denies the allegations contained in paragraphs twenty-five and twenty-six of the First Amended Complaint.

19. In responding to paragraph twenty-seven of the First Amended Complaint, he repleads and incorporates paragraphs one through eighteen of this Answer as though fully set forth herein.

20. He denies the allegations contained in paragraph twenty-eight of the First Amended Complaint.

21. In responding to paragraph twenty-nine of the First Amended Complaint, he repleads and incorporates paragraphs one through twenty of this Answer as though fully set forth herein.

22. He denies the allegations set forth in both the first paragraph numbered thirty of the First Amended Complaint and the second paragraph numbered thirty in the First Amended Complaint.

FIFTH DEFENSE

He hereby asserts and relies upon the affirmative defenses of sovereign immunity, qualified immunity, privilege and qualified privilege.

SIXTH DEFENSE

He affirmatively states that at all times relevant in this matter he acted lawfully and with a good faith belief that he was acting within the confirms of the law; that he acted with probable cause and with a good faith belief that he was acting with probable cause; and that all of his actions were legally reasonable and justifiable.

SEVENTH DEFENSE

He further relies upon any and all constitutional and/or statutory and/or common-law defenses that at the present time are, or in the future may be, applicable to the facts and allegations of this case including any that may become known through further investigation, discovery, or evidence presented at trial. These include, but are not limited to, self-defense, threat/provocation, contributory negligence, and assumption of the risk.

EIGHTH DEFENSE

The First Amended Complaint fails to state a claim against him that would allow for an award of attorney fees under state law.

NINTH DEFENSE

The First Amended Complaint fails to state a cause of action upon which relief can be granted as it does not request a specific amount of compensatory and/or punitive damages.

TENTH DEFNESE

He denies that Plaintiff was injured or damaged in the manner or to the extent alleged and he demands strict proof of all damages.

ELEVENTH DEFENSE

He denies he committed, or otherwise participated in, any act or omission that allegedly violated the civil rights of the Plaintiff and he demands strict proof of all allegations related thereto.

TWELFTH DEFENSE

He denies he committed any act or omission constituting any wrong alleged by Plaintiff against him.

THIRTEENTH DEFENSE

He denies he committed any act or omission constituting an assault and/or battery of the Plaintiff and he demands strict proof of all allegations relating thereto.

FOURTEENTH DEFENSE

He denies he committed any act or omission constituting gross negligence (or any negligence for that matter) and he demands strict proof of all allegations relating thereto.

FIFTEENTH DEFENSE

He denies he is anyway indebted to the Plaintiff under any theory of any law.

WHEREFORE, Defendant Douglas Serven respectfully requests this Court to dismiss this cause and award him costs expended

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OFFICER DOUGLAS SERVEN
By Counsel

BRAULT PALMER STEINHILBER & ROBBINS LLP

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Counsel for Defendant Serven

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 10th day of February, 2016, I electronically filed the foregoing pleadings with the Clerk of the Court using the CM/ECF system, which will send a notice of such filing (NEF) to the following: **Bradley Haywood, Esquire** and **Jonathan P. Sheldon, Esquire**, Sheldon, Flood & Haywood, PLC, 10621 Jones Street, Suite 301-A, Fairfax, Virginia 22030, Counsel for Plaintiff, and **Julia B. Judkins, Esquire** and **Nicholas J. Lawrence, Esquire**, Bancroft, McGavin, Horvath & Judkins, P.C., 9990 Fairfax Boulevard, Suite 400, Fairfax, Virginia 22030, Counsel for Defendant Holden.

//S//

August W. Steinhilber, III